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[APPELLATE CRIMINAL JURISDICTION]
CUSSEN, J.
April 29, 1935.

KON FATT KIEW.....Appellant.

vs.

PUBLIC PROSECUTOR.....Respondent.

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 14 of 1935]

The Rubber Regulation Enactment, 1934, sections 2 and 11(i)—Meaning of "rubber"—Is scrap-rubber within the definition of rubber?—Construction of Enactments.

Section 2 of the Rubber Regulation Enactment, 1934, defines "rubber" as follows:

> "'Rubber' means rubber prepared from the leaves, bark or latex of any rubber plant, and the latex of any rubber plant, whether fluid or coagulated, in any stage of the treatment to which it is subjected during the process of conversion into rubber, and latex in any state of concentration, and all articles and things manufactured wholly or partly of rubber."

In the process of tapping a rubber tree some latex from the tapping cut remains on the surface of the tree, some in the cup and some overflows on to the ground. Such latex, by exposure to the atmosphere and heat of the sun, dries up and there is formed a coagulated soft mass, which is called "scrap." This scrap-rubber comes within that portion of the definition of "rubber" which reads "latex in any state of concentration."

Section 11 (i) of the Enactment forbids the possession of stocks of rubber in excess of a certain amount and such stocks of rubber do not include the pieces of scrap-rubber remaining uncollected on the trees and on the ground of a rubber estate.

In construing a non-technical or non-scientific definition in an Enactment, the words and phrases used must be given this ordinary meaning, and in case of doubt any standard dictionary may be consulted.

When the meaning of a clause of an Enactment is clear, that meaning must be given to the language of the Enactment, even though the resulting construction may lead to consequences that are surprising and unexpected, but if there is any margin of construction fairly open on the language the Court may be guided by the object, scope and general scheme of the Enactment so far as such can be ascertained from the provisions of the Enactment itself.

Public Prosecutor v. *Chooi Yew Chor*, (1931—1932) F.M.S.L.R. 356, 2 Mal. L. J. 103 discussed.

W. G. W. Hastings for the appellant.

H. C. Willan, Deputy Legal Adviser, for the respondent.

Cur. adv. vult.

CUSSEN, J.—The appellant was charged before the Magistrate, Kuala Lumpur under section 11 (i) of the Rubber Regulation Enactment 1934 with being in possession of rubber in excess of the amount allowed under the provisions of the section. He was convicted of the charge and fined $50.00

One question arose for decision (determination) in this case. The Enactment in question is entitled "An Enactment to regulate the production and export of rubber."

We find the subject matter of the Enactment —rubber—defined in section 2. The substance with the possession of which the appellant is charged is what is known as "scrap-rubber," or simply "scrap."

The question for determination is does this "scrap" come within the definition of "rubber" in section 2 of the Enactment.

When a question of this nature arises it is as a rule either that something which nobody, or at any rate not the ordinary person, thought to be affected by the provisions of the particular law, is found to fall within the definition of the law, or that something which everyone considered, as a matter of course, to be within the scope of the law, is not in fact covered by the definitions therein; and so, in some cases to the agreeable surprise of persons concerned therewith, is free from the restrictions imposed in the law. This present instance appears to be one of the latter.

I have now to decide whether the Magistrate was right in holding that "scrap" is rubber as defined in the Enactment. The only part of the recorded evidence which is relevant for this purpose is that given by Mr. Eaton, who is the Director of the Rubber Research Institute of Malaya, and an acknowledged expert on matters appertaining to the cultivation and production of rubber.

He tells us what "scrap" is, and how it is formed. It is in the first place "latex." Now latex is not defined, but used in connection with rubber cultivation, everybody knows what it is, at least to the extent that it is a white milky fluid which flows from a rubber tree when a cut or incision is made on the bark of the tree.

The outflow is caught by a cup, and the contents of the cups are collected in buckets and other such vessels and brought to the estate factory where the fluid latex is subjected to various methods of treatment, which I need not detail, and the final result is the various forms of the raw product, rubber.

But some of the latex from the tapping cut remains on the surface of the tree, some in the cup, and some overflows on to the ground.

What happens to this? Exposed to the atmosphere and the heat of the sun, it gradually dries up, evaporation takes place, and the aqueous content of the fluid latex is driven out more or less completely, and there remains a coagulated soft mass, and this is what is called "scrap."

The definition of rubber in section 2 of the Enactment must now be considered. It tends to confusion that the word "rubber" which is being defined is used in the body of the definition. To avoid confusion we might substitute the words "regulated rubber" as the name of the substance which is defined, or we might indeed designate it by some symbol such as "X" which I will do.

Now "X" is defined by reference to two things which are not themselves defined in the Enactment, namely "rubber" and "latex."

Presumably these substances are so well and generally known as not to require definition. If we do not in fact know what they are we must inform ourselves by taking oral evidence or by consulting works of reference.

This definition contains four separate definitions. We may call them A, B, C and D.

It is clear that we are not concerned with "D", i.e. articles and things manufactured wholly or partly of rubber.

Before proceeding to consider A, B and C in relation to "scrap", I must refer briefly to the principles of construction to be applied to the words of the Enactment. Much has been put forward and many authorities cited on this point. The principles are quite clear.

This is admittedly not a technical or a scientific definition, so I must give to the words and phrases used their ordinary meaning. If I am in any doubt as to the ordinary meaning of a word, I can consult any standard general dictionary.

I must take the sense, not only of particular words, but of a sentence, or clause as a whole. When the meaning is plain and certain, that meaning must be given to the language of the Enactment, even though the resulting construction may lead to consequences that are surprising and unexpected, and such as one would think could not have been intended.

If there is any margin of construction fairly open on the language I am allowed to be guided by the object, scope and general scheme of the Enactment so far as such can be ascertained from the provisions of the Enactment itself.

When there is such a margin, as I term it, I should also use it to avoid any startling or absurd result.

I will now consider definitions A, B and C.

Under "A" this substance which I have called "X" means rubber prepared from the bark, or latex of any rubber plant.

Now scrap is certainly rubber, and its origin is the latex of the rubber plant. The important word therefore is the word "prepared." Can we, in its ordinary sense, apply the word "prepared" to the way in which the latex becomes "scrap" as explained by Mr. Eaton.

It is true that Mr. Eaton says that there are numerous processes of preparation which consist merely of drying by the heat of the sun.

The objection to this definition must then be that this drying is not effected by an intentional act; that it is not purposely designed and carried out as a conscious plan and method; and that the ordinary use of the word "prepared" and "preparation" implies this.

I am inclined to agree with that view; I do not think that this definition fits the case of scrap.

The learned Magistrate also rejected this definition A, though his difficulty appears, as I understand the judgment, to have arisen from being unable to accept "scrap" as "some substance other than latex" called "rubber." There does not to me appear to be any difficulty in this.

Definition "B" reads "The latex of any rubber plant whether fluid or coagulated in any stage of the treatment to which it is subjected during the process of conversion into rubber": and it is on the interpretation and application of this definition that the Magistrate has arrived at the finding that "scrap" is within the definition of "rubber" in the Enactment.

Here again it may be noted that the definition includes both the words "latex" and "rubber."

The question then is can the manner in which scrap is formed be properly described as the subjecting of latex to treatment in a process of conversion into rubber.

The method by which the Magistrate arrives at his conclusion is to a large extent that which Mr. Willan for the Respondent has used in his argument. He picks out a dictionary meaning for each of the important words, and, much after the manner of solving a puzzle, says there is the meaning of the definition. I think this is open to the criticism which Mr. Hastings, for the appellant, has directed at it.

The sentence of the definition must be taken as a whole. So taken it seems to me to indicate something definite, planned, and systematically carried on. It is the same difficulty I found in the use of the word "prepared."

For this reason I am of opinion that this definition "B" does not properly apply to "scrap."

I must now consider definition "C" which reads "Latex in any state of concentration."

It is to be noticed that this is a much simpler definition. For one thing the word "rubber" does not appear in it.

It is of interest to point out here that in the former Rubber Restriction Enactments (1922 and 1924) rubber is defined merely as "latex, treated or untreated," a simple and comprehensive definition.

But to consider definition "C" in its application to "scrap."

Is scrap latex? There is no doubt it is; Mr. Eaton tells us so. The remaining question is—is it in a state of concentration.

Here I will consider the case cited by Mr. Willan, *Public Prosecutor* v. *Chooi Yew Chor*, (1931-1932) F.M.S.L.R. 356. This deserves careful consideration for two reasons. First the Enactment there dealt with, i.e. The Tin and Tin Ore Restriction Enactment 1931, is a parallel to the Rubber Regulation Enactment 1934.

The object, scheme, and operation of both Enactments is to control, and regulate, and restrict, the export and production of in the one case, tin and tin-ore, and in the other, rubber. This is carried out by a system of certificates and quota allowances.

In the second place the very word which is here to be construed and interpreted is construed and interpreted in relation to tin-ore in the judgment in that case.

The judgment considers what meaning may be given to the words "process of concentration" in relation to tin-ore.

Now the usual method of concentrating tin-ore is by washing with water. The earth containing tin-ore which is known as "karang" is on being dug out or removed from its place *in situ* in the mine, washed. The result is that the lighter non-staniniferous material is washed away, the heavier tin-ore remains, and becomes more and more highly concentrated according to the extent to which this treatment is carried. The familiar example of this process, in its simpliest form, is the operation of the dulang washer, washing for tin-ore in a stream.

But the learned Judge, in his judgment, goes beyond this in the meaning he is prepared to give to the words "a process of concentration." He says "It seems to me that the removal from its position *in situ* in the ground to a kongsi building on the mine is a partial process of concentration without more," and again he says "Assuming for the sake of argument that very rich ore is found in a mine and selected by hand picking, or by some other method segregated from the surrounding ground and conveyed to a store on the mine, this in itself is to my mind a process of concentration by the mere selection of the tin-ore from the ground surrounding the position where it is found."

This is indeed a very wide interpretation of the word "concentration"—it is in fact using it in the sense in which one speaks of concentrating troops at a certain spot; to bring together, gather or collect at one spot.

Now I think, coming to the question of "scrap," it is evident that if this wide interpretation be given to the word "concentration" that latex is in a process of concentration in this extended sense, the moment when, by tapping the tree, the latex is brought to flow out and escape at one point; and still more so, an exact parallel, when the scrap scattered about the land, is collected into a store on the Estate.

But, with respect to the learned Judge, such an interpretation, in my opinion, goes too far, logical though it may be, and I should be very doubtful about adopting it.

Instead I will consider what in relation to a fluid substance like latex is the process of concentration, analogous to that of washing in the case of a solid such as tin-ore.

The ordinary method of concentration of a fluid is by evaporation, caused by heating. When you heat a liquid, which is a mixture, evaporation takes place, the water content is gradually expelled, and the liquid becomes more and more concentrated, until, in the final stage, in the case of non-volatile substances, you get remaining a thick liquid, or a semi-liquid, or even a solid substance as the last stage of the process of concentration by evaporation.

Now it appears to me that this is essentially what happens when the liquid latex dries up by evaporation and takes the form of "scrap." It is immaterial that the evaporation is caused by the action of the air and heating of the sun and not by the application of an artificial heating agency.

Mr. Hastings has in fact referred to the same method in actual use in which liquid latex is sprayed on to heated metal plates—immediate and complete evaporation takes place, and the latex is left as a powder which, he tells us, is called concentrated latex.

It is clearly identical with the formation of scrap—concentration by evaporation. The result is a concentration or concentrate. In my opinion therefore this definition of rubber covers and includes the case of scrap.

I will not, for the moment, consider whether there is or is not in this definition any such margin available for interpretation as I have referred to. Clearly if there is the purpose and scheme of this Enactment as a whole do not call for any different interpretation from that which I have found. The inclusion of "scrap" within the definition of the rubber subject to the Enactment cannot but be consonant with the general object.

It remains to consider whether it leads to any absurd result in the application of any of the specific provisions of the Enactment.

This leads me to the final argument put forward by Mr. Hastings for the appellant, and, as I understand him, he considered it to present a real, substantial, practical difficulty. It arises from section 11 of the Enactment. The argument is—section 11 limits the quantity of rubber which one may possess. Any excess over a defined amount is an offence. The ordinary operation of tapping to obtain the latex required for the production of factory rubber of necessity produces a certain quantity of scrap. The result must be, at any rate after some time, the existence of a quantity of rubber in excess of the permitted amount and so, to avoid this position, scrap must be excluded from the operation of the Enactment, and the definition of rubber so interpreted as to effect this exclusion.

This is clearly an important argument. Mr. Willan for the Public Prosecutor endeavoured to dispose of it by advancing a special interpretation for the word "possession" that the scrap could not be said to be in possession until it had been collected.

I am afraid I cannot agree with the meaning of the word "possession." Anything on the land, belonging to me, and which I know to be there, is, in the fullest sense, in my possession.

But what does section 11(i) actually say? It reads—"Every person other than a licensed dealer who has in his possession or under his control at any time any stocks of rubber exceeding two-thirds of the amount of rubber which he is entitled to export during the quarter in which any such stocks are so in his possession or under his control, shall be guilty of an offence and shall be liable to a fine not exceeding one thousand dollars or to imprisonment of either description for a period not exceeding three months, and any rubber in excess of the amount authorised by this section may be seized by the Controller or any officer authorised by him in that behalf and shall be forfeited to the Government."

The exception to licensed dealers is of some significance.

Now what the section actually forbids is the possession of stocks of rubber in excess of a certain amount; it does not simply say rubber in excess of a certain amount. We must, therefore, consider the meaning of the phrase "stocks of rubber" in the ordinary sense of the words.

We are familiar with this form of expression —we understand what is meant by stocks of merchandise, stocks of goods in godowns and shops, stocks of rice. The general meaning is a store or collection of the thing or things referred to.

If you go to a rubber estate and ask the Manager to show you his stocks of rubber, you will expect him to take you to his store, his smoke house and his factory; you certainly will not expect him to walk with you over perhaps a thousand acres of rubber land, pointing out the little bits of scrap rubber on the trees and on the ground.

Here then is an interpretation of the words of section 11 which does away with the proposed absurdity, and it is, in my opinion, a perfectly rational, ordinary, legitimate interpretation of the language used. That being so this argument of absurdity fails.

There is, therefore, no reason to interpret the definition of rubber in any other way than I have done; and I doubt if any other interpretation is at all possible, if any such margin as I have referred is afforded by the language of the Enactment.

I conclude, therefore, that it is rightly held that "scrap" rubber falls within the definition of the rubber which is the subject matter of this case, and therefore this appeal fails and is dismissed.

Appeal dismissed.